

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 7, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-3238

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. HARLAN RICHARDS,

PETITIONER-APPELLANT,

V.

GOVERNOR TOMMY THOMPSON AND J. DENIS MORAN,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
SARAH B. O'BRIEN, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Harlan Richards appeals an order dismissing his declaratory judgment action challenging the constitutionality of various provisions of the Wisconsin Prisoner Litigation Reform Act (PLRA). The issue is whether

Richards, a Wisconsin prison inmate, presented the court with a justiciable controversy. We affirm the trial court's determination that he did not.

¶2 Richards's complaint identified thirteen provisions of the PLRA that he alleged were unconstitutional. Both sides moved for summary judgment. Richards's submissions contained no proof that any of the challenged provisions have been applied to him to his detriment in any prior or pending action.¹ Essentially, Richards bases his case on what he views as the inevitability that some or all of the challenged provisions will affect him in the future. The trial court concluded that Richards's claim of future injury was insufficient to maintain this action, and dismissed it. On appeal, Richards concedes he has suffered no actual injury to date, but contends that showing one is not a prerequisite to seeking declaratory relief.

¶3 The trial court may exercise discretion to hear an action for declaratory relief only when there is a justiciable controversy. *Loy v. Bunderson*, 107 Wis. 2d 400, 409, 320 N.W.2d 175 (1982). The standards for determining whether a controversy is justiciable include the requirement that the issue or issues involved must be ripe for judicial determination. *Id.* at 409-10. Claims based on future or hypothetical facts are not ripe. *State v. Armstead*, 220 Wis. 2d 626, 631, 583 N.W.2d 444 (Ct. App. 1998). Ripeness requires that the facts be sufficiently developed, and neither contingent nor uncertain. *Loy*, 107 Wis. 2d at 412.

¶4 The trial court reasonably dismissed this action because Richards's claims are not ripe. Richards may be correct in asserting that certain of the

¹ Richards did offer evidence that some PLRA provisions have affected him in previous cases, but not in a manner that measurably injured his interests. He does not report any prior challenges to the PLRA in these cases.

provisions may inevitably be applied to his detriment, given the extensive litigation he engages in concerning prison conditions. However, when and under what circumstances any of the fourteen provisions he challenges will be applied to him is uncertain. Courts should not decide the constitutionality of a statute absent exceptional circumstances. *See Kollasch v. Adamany*, 104 Wis. 2d 552, 561, 313 N.W.2d 47 (1981). Richards can challenge any or all of the PLRA provisions when and if they are applied to his detriment, within the specific factual context of the case properly presenting the issue.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

